IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. 23-01449, 22-01464, 23-01448 & 22-01465.

DIRECTOR OF PUBLIC PROSECUTIONS

v

MICHAEL ROBB AND ADAM TSAKTSERLIS

JUDGE:	HIS HONOUR JUDGE WRAIGHT
WHERE HELD:	Melbourne
DATE OF HEARING:	11 September 2023
DATE OF SENTENCE:	11 September 2023
CASE MAY BE CITED AS:	DPP v Robb & Tsaktserlis
MEDIUM NEUTRAL CITATION:	[2023] VCC 1669

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW – Sentencing.
Catchwords:	Plea of guilty – Aggravated carjacking – Causing injury recklessly – Causing injury intentionally – Armed robbery – Robbery – Assist offender – Commit indictable offence whilst on bail – Theft – Common assault – Possession of a drug of dependence – Possession of false document – Negligently dealing with proceeds of crime – Attempt to obtain financial advantage by deception – Possession of a traffickable quantity of firearms – Prohibited person possess imitation firearm – Handling stolen goods – Relevant and extensive prior criminal history – Drug related offending – Parity – Prospects of rehabilitation assessed as fair (Tsaktserlis) and guarded (Robb) – *Verdins* – COVID-19 pandemic.
Legislation Cited:	*Crimes Act 1958* ss 7C(1), 18, 73(1), 74, 75, 75A, 79A, 82(1), 88, 194(4), 321M, 325; *Control of Weapons Act 1990* s 5AB(2); *Drugs, Poisons and Controlled Substances Act 1981* s 73(1); *Sentencing Act 1991* ss 6AAA, 10AD, 18; *Bail Act 1977* s 30B.
Cases Cited:	*Worboyes v The Queen* [2021] VSCA 169.
Sentence:	[Robb] Imprisonment for a period of 7 years and 2 months with a non-parole period of 4 years and 9 months; [Tsaktserlis] Imprisonment for a period of 6 years and 6 months imprisonment with a non-parole period of 4 years.

APPEARANCES:	Counsel	Solicitors
For the DPP	Mr M Turner	Office of Public Prosecutions
For Michael Robb	Mr R Backwell	Valos Black & Associates
For Adam Tsaktserlis	Mr J Portelli	Peter Lunt & Associates

HIS HONOUR:

1 **Introduction**

2 Michael Robb and Adam Tsaktserlis, on joint Indictment C2114419.1, you have both pleaded guilty to:

(a) one charge of aggravated carjacking contrary to 79A of the *Crimes Act 1958* (‘*Crimes Act*’), which carries a maximum penalty of 25 years imprisonment (Charge 1 on Indictment C2114419.1);

(b) one charge of causing injury recklessly contrary to s 18 of the *Crimes Act*, which carries a maximum penalty of 5 years imprisonment (Charge 2 on Indictment C2114419.1); and

(c) two charges of causing injury intentionally contrary to s 18 of the *Crimes Act*, which carries a maximum penalty of 10 years imprisonment (Charges 3 and 4 on Indictment C2114419.1).

3 Michael Robb, on the same Indictment C2114419.1, you have also pleaded guilty to:

(a) one charge of robbery contrary to s 75 of the *Crimes Act*, which carries a maximum penalty of 15 years imprisonment (Charge 5 on Indictment C2114419.1); and

(b) one charge of armed robbery contrary to s 75A of the *Crimes Act*, which carries a maximum penalty of 25 years imprisonment (Charge 6 on Indictment C2114419.1).

4 Adam Tsaktserlis, on the same Indictment C2114419.1, you have also pleaded guilty to:

(a) one charge of assist offender contrary to s 325 of the *Crimes Act*, which carries a maximum penalty of no more than 5 years imprisonment or no

more than half of the maximum penalty for the principal offence (in this case being armed robbery), which is 12 years imprisonment (Charge 7 on Indictment C2114419.1).

5 You have also pleaded guilty to the related summary charge of commit indictable offence whilst on bail contrary to s 30B of the *Bail Act 1977*, which carries a maximum penalty of 3 months imprisonment (Summary Charge 21).

6 Michael Robb, on Indictment M10773308, you have pleaded guilty to:

(a) one charge of theft contrary to s 74(1) of the *Crimes Act*, which carries a maximum penalty of 10 years imprisonment (Charge 1 on Indictment M10773308);

(b) one charge of common assault contrary to common law, which carries a maximum penalty of 5 years imprisonment (Charge 2 on Indictment M10773308);

(c) one rolled-up charge of possession of a drug of dependence contrary to s 73(1) of the *Drugs, Poisons and Controlled Substances Act 1981* ('*Drugs, Poisons and Controlled Substances Act*'), which carries a maximum penalty of 1 year imprisonment (Charge 3 on Indictment M10773308);

(d) one charge of possessing a false document contrary to s 83A(5) of the *Crimes Act*, which carries a maximum penalty of 10 years imprisonment (Charge 4 on Indictment M10773308); and

(e) one charge of negligently dealing with proceeds of crime contrary to s 194(4) of the *Crimes Act*, which carries a maximum penalty of 5 years imprisonment (Charge 5 on Indictment M10773308).

7 Adam Tsaktserlis, on Indictment M10772938, you have pleaded guilty to:

(a) one charge of attempt to obtain financial advantage by deception contrary to ss 82(1) and 321M of the *Crimes Act*, which carries a maximum penalty of 5 years imprisonment (Charge 1 on Indictment M10772938);

(b) one charge of attempt to obtain property by deception contrary to ss 81(1) and 321M of the *Crimes Act*, which carries a maximum penalty of 5 years imprisonment (Charge 2 on Indictment M10772938);

(c) one charge of possession of a traffickable quantity of firearms contrary to s 7C(1) of the *Firearms Act 1996*, which carries a maximum penalty of 10 years imprisonment (Charge 3 on Indictment M10772938);

(d) one rolled-up charge of prohibited person possess imitation firearm contrary to s 5AB(2) of the *Control of Weapons Act 1990* ('*Control of Weapons Act*'), which carries a maximum penalty of 10 years imprisonment (Charge 4 on Indictment M10772938);

(e) one rolled-up charge of possession of a drug of dependence contrary to s 73(1) of the *Drugs, Poisons and Controlled Substances Act*, which carries a maximum penalty of 1 year imprisonment (Charge 5 on Indictment M10772938); and

(f) one charge of handling stolen goods contrary to s 88 of the *Crimes Act*, which carries a maximum penalty of 15 years imprisonment (Charge 6 on Indictment M10772938).

8 You have both admitted your prior criminal records.

9 **Circumstances of the offending**

10 Prosecution openings were tendered on the plea and may be summarised as follows:

11

12 In respect of the offending encompassed by Indictment C2114419.1

13 Michael Robb, you resided in Blackburn South at the time of the offending and were 25 years old. Adam Tsaktserlis, you resided in Warrandyte and were 28 years old.

14 On 19 March 2021, you, Adam Tsaktserlis, met with associate Corey Mattei to purchase a white Nissan Navara (registration SFU501) ('white Nissan Navara'). Mr Mattei agreed to sell the vehicle to you for $2,000 due to it not being in working order. You took possession of the vehicle on this day but did not transfer the vehicle into your name. You did not pay Mr Mattei any money for the vehicle.

15 *First incident: 28 March 2021*

- *Charge 1: Aggravated carjacking*
- *Charge 2: Causing injury recklessly*

16 On 28 March 2021, at approximately 6.45 pm, the two of you were observed standing in the driveway of a residential address in Springvale by the victim of this first incident, Mr Guarino, and his wife. Mr Guarino observed you both through his kitchen window; the two of you were standing in his driveway near the side gate.

17 Mr Guarino called out to you both and you, Michael Robb, replied, 'Is this Andy's house?' to which Mr Guarino replied 'no'. Both of you then pulled your hoods over your heads and walked away.

18 Mr Guarino was concerned about this behaviour so he got into his vehicle and went looking for the two of you in the surrounding streets. He was driving his blue 2003 Honda CRV wagon.

19 A short time later, Mr Guarino received a call from his wife stating that the two males had returned and that they were in the street.

20 Mr Guarino returned and parked just short of his house on the road outside another address when the two of you appeared and began walking towards the driver's side door of his car. The driver's side window was down as you, Michael Robb, approached the open window. You confronted Mr Guarino and asked him why he was following you. You then reached inside the driver's side window and removed the key's from the ignition, and punched Mr Guarino on the right side of his face with a closed fist. This was witnessed by a neighbour, Ms Pastuszko.

21 Mr Guarino, fearing for his safety, climbed across to the passenger side of the vehicle and exited from that door onto the nature strip. He asked for his keys back and told you both that he had a medical condition. You did not return his keys. Mr Guarino then began walking back to his house when he was struck with a baseball bat to his upper right leg. After being struck, he ran home and called '000' for assistance.

22 Michael Robb, you ran and got into Mr Guarino's vehicle. You were carrying the baseball bat and you drove away. Adam Tsaktserlis, you ran to the nearby white Nissan Navara and drove away in the opposite direction.

23 The Pastuszkos heard the commotion outside and went to see what was going on. Ms Pastuszko heard the commotion outside and also went to see what was going on. She captured footage of the two of you stealing Mr Guarino's vehicle. She also observed you, Michael Robb, carrying a baseball bat and getting into the vehicle. She saw you, Adam Tsaktserlis, leaving in the white Nissan Navara. She recorded this on her mobile phone and this footage was provided to the police. The two of you were identified as the offenders in the footage.

24 The police were called. Acting Sergeant Dan Nguyen and Constable Bianca Christie attended the scene and obtained a statement from Mr Guarino and the witnesses in relation to the incident. Senior Constable Christopher Lawson attended and followed up with Mr Guarino, photographing his injuries, being a large dark bruise to his upper right thigh area.

25 At approximately 7.00 pm on 28 March 2021, Ms Harkness was shopping at Brandon Park shopping centre when she observed a Caucasian male wearing a camouflage hooded jumper and black shorts with large red and white stripes on both sides exit a blue Honda CRV bearing the same registration as Mr Guarino's vehicle parked at the Brandon Park shopping centre.

26 The male walked to a dumpster and placed a jumper covering a long wooden object into the bin before walking off into the shopping centre. Believing this behaviour was suspicious, Ms Harkness contacted the police assistance line before being transferred to '000'. She also took a photograph of the vehicle. CCTV footage from the shopping centre depicts this male identified by the distinctive clothing and tattoos to be you, Michael Robb.

27 You are clearly captured on CCTV footage to be wearing the same clothing as you were depicted to be wearing in the footage of the aggravated carjacking approximately 15 minutes earlier.

28 Senior Constable Priscilla Saouma and Constable Jake Nash attended, located and seized the jumper and baseball bat. The jumper has since been identified by the victim as belonging to his son's friend and that it was inside his vehicle at the time of the vehicle being stolen.

29 Clear CCTV footage from apartment complex in Glen Waverley depicts you, Michael Robb, returning to the apartment complex at approximately 7.24 pm.

30 On 6 April 2021 at 3.00 am, Mr Guarino's blue Honda CRV was located in the car park of an address in Wantirna South, where it was recovered and towed for forensic analysis.

31 It was forensically analysed and photographed by Crime Scene Service Officer Leading Senior Constable Lisa Fairweather where two latent fingerprints were lifted from the vehicle for DNA analysis and fingerprinting.

32 *Second incident: 30 March 2021*

- *Charge 3: Intentionally causing injury to Mr Trinh*
- *Charge 4 (Michael Robb only): Robbery*
- *Charge 5: Intentionally causing injury to Mr Bell*

33 On 30 March 2021 at approximately 9.15 pm, Mr Bell and his carer Mr Trinh were walking south along Middleborough Road in Blackburn South when they were approached by a vehicle described as a white dual cab utility with a canopy ('white utility vehicle').

34 Michael Robb, you were a passenger in this vehicle, which pulled up alongside Mr Bell and Mr Trinh. You struck Mr Trinh to the back of the head with a large metal object whilst still seated inside the vehicle. You together with you, Adam Tsaktserlis then exited the vehicle.

35 The two victims both ran in opposite directions attempting to flee you two. Mr Trinh was struck to the back of the head again with the metal object before he ran across Middleborough Road to get help. Mr Bell, fearing for his safety, ran into Wilkes Place. Michael Robb, you chased him down and punched him to the back of the head, which caused Mr Bell to fall to the ground. Whilst Mr Bell was on the ground, you stomped on his head and punched him multiple times before removing his wallet from his pocket which contained $400 cash, identification cards and bank cards in Mr Bell's name. You then walked off back towards Middleborough Road with the wallet belonging to Mr Bell.

36 The attack was witnessed by a Ms Barnard as she was coming from the front of her address to her front door. She called out to the two of you whilst you were attacking the victims: 'I'm calling the police, get off him, I have cameras'. She then returned inside where she called '000'.

37 Mr Bell recalled a lady coming out of her house trying to get the two of you to stop hitting him.

38 Michael Robb, you returned and dragged Mr Bell to the curb where you continued to repeatedly stomp on his head, kicking and punching him to the upper and lower body. You were joined by your co-accused, who used what appears to be a metal pole to strike Mr Bell around the head and upper body numerous times. The violent attack lasted for approximately two and a half minutes before the two of you decamped back towards Middleborough Road and fled in the white utility vehicle.

39 Mr Bell was left in the driveway of the Wilkes Place address and crawled back towards the house profusely bleeding from his head and face. Police and ambulance arrived a short time later to render assistance to both victims.

40 Witness Mr Jenkins was outside a restaurant on Middleborough Road and observed the incident unfold from across the road. He observed Mr Trinh running away from the two of you, across Middleborough Road towards the restaurant. Mr Trinh was bleeding from his head and on the phone to '000'. Mr Jenkins noted the registration of the vehicle the two of you decamped in to begin with 'SFN' as the vehicle sped off south on Middleborough Road. The violent assault was captured on CCTV which clearly captures the offence.

41 Both victims were conveyed by ambulance to the Royal Melbourne Hospital for treatment. Mr Bell suffered the following injuries as a result of the assault:

(a) posterior scalp laceration requiring six sutures;

(b) left eyebrow laceration requiring five sutures;

(c) fracture/loss of 11 apical tooth which required review from oral and maxillofacial surgery;

(d) bilateral nose fracture; and

(e) a C-spine fracture which required an aspen collar to be worn for six weeks.

42 Due to the nature of Mr Bell's injuries, he was admitted to hospital and discharged after five days of treatment.

43 Mr Trinh suffered the following injuries as a result of the assault:

(a) right side face swelling and laceration requiring sutures; and

(b) left ear tympanic membrane rupture.

44 Mr Trinh was required to remain overnight and was discharged the following day.

45 Approximately 15 minutes after the offence, at 9.28 pm, a White Nissan Navara bearing registration SFU501 was captured by an Automated Number Plate Recognition camera attached to Nunawading Highway Patrol in Springvale Road, Donvale, less than 10km away.

46 On the 6 April 2021 at approximately 3:00 pm, a police unit patrolling Christine Street, Blackburn South noted that vehicle SFU501, being a White Nissan Navara utility with canopy was parked outside a house on Christine Street.

47 *Third incident: 13 April 2021*

- *Charge 6: Armed Robbery of Mr Wilson*

48 On the 13 April 2021, at approximately 8:00 pm, the two 15-year-old victims, Mr Wilson and Mr Fankhauser were walking along Heatherdale Road, Mitcham.

49 Whilst waiting for the pedestrian lights at the intersection of Heatherdale Rd and Canterbury Rd, Mitcham, they were approached by a white Nissan Navara utility vehicle with canopy, bearing registration SFU501.

50 The victims heard a male voice yell out and looked in the direction of the voice. You, Michael Robb, exited the front passenger seat of the vehicle and ran towards the victims. You had in your possession what appeared to the victims to

be a gun and made aggressive demands for their wallets. The gun was an imitation gun, but the victims were not aware of that at the time.

51 Mr Fankhauser did not have a wallet. Mr Wilson handed over his iPhone 8 and a wallet case that did not have anything in it.

52 Michael Robb, after taking Mr Wilson's phone, you hit him on the side of his head near the temple with the imitation handgun before running back to the car, continuing to point the gun at the victims, and shouted, 'Fuck off, don't say anything, get out of here'.

53 Mr Fankhauser identified the gun to have white paint spotted on it.

54 Witness Mr Sutton observed the armed robbery and noted the registration SFU501 whilst also taking a photograph of the vehicle from a distance. He approached the two victims and advised them of the registration. Mr Fankhauser noted down the registration of the Nissan.

55 The victims described the front passenger being you, Michael Robb and the driver being you, Adam Tsaktserlis.

56 At approximately 2.30 am on 15 April 2021, police intercepted the white Nissan Navara with registration SFU501 in Berwick. Michael Robb, you were in the front passenger seat, and Adam Tsaktserlis, you were located driving the vehicle and an associate was seated in the back seat.

57 Michael Robb, you were arrested and conveyed back to the Narre Warren Police Station. You also had your phone seized. Adam Tsaktserlis, you were released from the scene as at the time Police members were not aware of your involvement in the offending.

58 Michael Robb, upon your arrest, a safety and evidence search was conducted and members located a mobile phone belonging to you.

59 On 15 April 2021 at approximately 1.30 pm, a search warrant pursuant to s 465 of the *Crimes Act* was executed at the residential address of you, Michael Robb, on Christine Street, Blackburn South. No exhibits were seized.

60 The white Nissan Navara driven by you, Adam Tsaktserlis, was seized by police on 15 April 2021 and forensically processed. The following items were located inside the vehicle:

(a) a Samsung mobile phone (under the front passenger seat);

(b) inside a Rebel Sport bag found on the rear driver's side seat –

(i) two white Asics runners;

(ii) one pair of black shorts with Nike logo on left pocket;

(iii) one pair of black shorts with 'Nike' written on left pocket;

(iv) one white t-shirt with Under Armour logo on front;

(v) one pair of black Adidas pants with 'Adidas' on left pocket and two white stripes down left leg;

(vi) one pair of black shorts with Nike logo on left pocket; and

(vii) one white Anko t-shirt.

61 As a result of the examination of that vehicle on 15 April 2021, at approximately 1.25 pm, another search warrant pursuant to s 465 of the *Crimes Act* was executed at the residential address of you, Adam Tsaktserlis, in Warrandyte.

62 You were located on the bed within the bedroom of your address and were arrested. The following items were located in the bedroom:

(a) one Apple iPhone;

(b) one grey and black Adidas jumper;

(c) one black diary book;

(d) one Mazda key;

(e) one safe;

(f) one empty black wallet with what appeared to be white paint on it; and

(g) one CCTV camera.

63 The grey and black Adidas jumper matched that which was worn by you, Adam Tsaktserlis, in the mobile phone footage of the aggravate carjacking on 28 March 2021.

64 The black diary seized from your bedroom had the details of Mr Bell, the victim in the 30 March 2021 armed robbery, noted down in it.

65 You were transported to Box Hill Police Station for interview.

66 Michael Robb, you were interviewed by police in relation to the matters on 15 April 2021. You denied being involved in any offending.

67 Adam Tsaktserlis, you were interviewed by police in relation to the matters on 15 April 2021. The prosecution opening provides a summary of your answers and explanations in relation to the various incidents which I will not reproduce in these reasons.

68 The contents of the mobile phones belonging to each of you were downloaded. A number of texts and images in relation to the offending are summarised in the prosecution opening which I will not reproduce in these sentencing reasons.

69 <u>In respect of the offending encompassed by Indictment M10773308</u>

70 Michael Robb, you are the accused named in this Indictment. Your co-offender in this matter is Jake Fitzgerald. The victims are Woolworths and Mr Cella.

71 *Charge 1: Theft*

72 *Charge 2: Common law assault*

73 On 22 October 2020 at approximately 6.00 am, you and Mr Fitzgerald were dropped off at the Ringwood Police Station by taxi. The driver told the police that you and Mr Fitzgerald were being destructive inside his taxi. Police spoke with you two and ascertained your details. The two of you then walked across the road pushing a trolley with your belongings in the direction of Eastland Shopping Centre.

74 At around 7.00 am, you and Mr Fitzgerald entered the Woolworths in Eastland Shopping Centre and concealed a number of items on your persons. The two of you then proceeded to the registers. You approached the registers and attempted to make a genuine purchase for one item.

75 Ms Kennington, a customer service operator, noticed there was a bowl in the trolley and asked Mr Fitzgerald if he was going to pay for it. There was a further discussion and Ms Kennington asked to check the trolley as she had concerns about other Woolworths products being in the trolley. She informed the two of you of the store's conditions of entry when approximately six items that had been concealed in your jacket fell to the floor.

76 Mr Cella, the manager of this Woolworths at the time, observed you taking a number of items, including some 'Command' hooks, without paying for them. You did not have permission to take the 'Command' hooks.

77 After some discussion, you and Mr Fitzgerald left the store followed by Ms Kennington and Mr Cella, where a short verbal discussion occurred.

78 Mr Cella told you that it was 'not a big deal and that it could be sorted out when the police get here'. You asked Mr Cella to let you and Mr Fitzgerald pay for the

goods and then you would go. Mr Cella told you that you both that you could not return to the store due to your actions.

79 As Mr Cella looked back to the service area, you punched him to the left side of his face just above the lip with what felt to Mr Cella like a closed fist. This caused his lip to swell up and chipped one of his teeth. Mr Fitzgerald tried to pull you away.

80 Mr Cella saw Mr Fitzgerald with a clenched fist and so tried to defend himself by kicking him in the chest, after which time you pulled Mr Fitzgerald away.

81 The two of you left the Eastland Shopping Centre via the escalator to the carpark. Mr Cella identified the two of you as having been in possession of a small box cutter and a hammer.

82 *Charge 3: Possession of a drug of dependence*

83 *Charge 4: Possessing a false document*

84 *Charge 5: Negligently dealing with proceeds of crime*

85 At approximately 2.30 am on 15 April 2021, police intercepted the white Nissan Navara (registration SFU501) in Berwick. You were in the passenger seat and the vehicle was driven by an associate. There was another associate in the back seat.

86 You were arrested and conveyed back to the Narre Warren Police Station.

87 Your mobile phone was seized.

88 Upon your arrest, a safety and evidence search was conducted where members located the following items in your possession:

(a) a Ziplock bag containing methylamphetamine;

(b) vials of anabolic steroids;

(c) a Ziplock bag containing cannabis; and

(d) a false driver licence in the name of Ilias Avgoulas.

89 You had $200 cash in your possession. You did not give any explanation as to how this money came to be in your possession. You dealt with this money and were negligent as to whether or not it was the proceeds of crime.

90 A mobile phone belonging to you was searched and did not provide any evidence relevant to these charges.

91 In your record of interview on 15 April 2021, you denied all allegations in relation to all the charges.

92 <u>In respect of the offending encompassed by Indictment M10772938</u>

93 Adam Tsaktserlis, you are the accused named in this Indictment.

94 *Charge 1: Attempt to obtain financial advantage by deception*

95 On 16 March 2021, you were in possession of a driver licence in the name of a Mr Avgoulas. The licence had been manipulated so that the image of your co-accused, Mr Robb, appeared on the licence.

96 You filled out documents applying for a loan with a financial institution called 'Cash Train' in the name of Mr Avgoulas for $2,000 using the fraudulent identification. The application included your own address and the money was going to go into an account where the account holder's name was 'Adam'.

97 Your application to obtain funds was ultimately unsuccessful. The fraudulent driver licence was located in the possession of you, Michael Robb.

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100 *Charge 2: Attempt to obtain property by deception*

101 On 6 April 2021 you were in possession of a credit card owned by and in the name of Mr Bell.

102 You contacted a company called X-Force Tactical. This company supplies gel blasters.

103 You bought two units for $425.40 each and one unit for $340.40 using Mr Bell's credit card. These transactions are recorded in the bank statement of Mr Bell and the items were found in your home on 15 April when the police searched your home.

104 Police found the details of the fraudulent purchase of gel blasters utilising Mr Bell's bank card on your phone.

105 Mr Bell was not aware that you were using his credit card and did not give you permission to use his credit card.

106 X-Force Tactical did not know that you were using Mr Bell's card without his consent.

107 *Charge 3: Unauthorised possession of a traffickable quantity of firearms*

108 *Charge 4: Prohibited person possess imitation firearm (rolled-up)*

109 *Charge 5: Possession of a drug of dependence (rolled-up)*

110 *Charge 6: Handling stolen goods*

111 On 19 March 2021, you met with associate Mr Mattei to purchase a White Nissan Navara (registration SFU501) as outlined above.

112 At approximately 2.30 am on 15 April 2021, police intercepted the White Nissan Navara in Berwick, and you, Michael Robb and another associate were found inside the vehicle as described above.

113 The police seized the vehicle and it was taken to Dandenong to be forensically processed. The following items were located inside the vehicle:

(a) a Ziplock bag containing methylamphetamine;

(b) seven vials of testosterone/anabolic steroids; and

(c) one vial of an unknown substance.

114 The following items, also located inside the vehicle, fall within the meaning of an imitation firearm pursuant to s 3 of the *Control of Weapons Act*:

(a) an unknown gel blaster model M1911 semi-automatic pistol; and

(b) located inside a black bag in the canopy of the vehicle:

(i) a GLK Glock brand model 18 gel blaster;

(ii) a Glock brand model 26 Gen 5 gel blaster;

(iii) a Glock brand model 17 gel blaster;

(iv) a Jianfang brand gel blaster;

(v) an STD brand gel blaster;

(vi) a Wilson Combat brand gel blaster; and

(vii) four unbranded imitation cap guns.

115 On the same day at approximately 1.25 pm, police executed a search warrant pursuant to s 465 of the *Crimes Act* at your residential address in Warrandyte, as outlined above. You were located in the bedroom and were arrested. The following items were located in your bedroom:

(a) a Ziplock bag containing cannabis;

(b) a Ziplock bag containing foil heroin;

(c) a Ziplock bag containing heroin;

(d) an imitation firearm with what appeared to be white paint on same; and

(e) an identification card belonging to a Mr Johnston, which was confirmed to have been stolen.

116 A preliminary search of your phone (located on the sofa) displayed details of the fraudulent purchase of X-Force gel blaster firearms utilising Mr Bell's bank card.

117 You were was transported to Box Hill Police Station for interview.

118 At the time of your arrest, you were regarded as a 'prohibited person' pursuant to s 3 of the *Control of Weapons Act*. This meant you could not be issued with a firearms licence and that you were prohibited from possessing, using or carrying a firearm or an imitation firearm.

119 On the 15 April 2021, you were interviewed by police in relation to these matters.

120 In relation to purchasing items from 'Tactical Toys', you admitted to doing so but stated that you used your own accounts to pay for the items.

121 When asked questions about the Nissan Navara and the items found inside, you said you had owned the car 'for about a week and a half – borderline two weeks' and that you had been the driver since picking it up.

122 You stated that you cleaned out the driver's footwells but denied seeing or having any knowledge of items located inside the canopy of the vehicle.

123 You admitted to owning the Gucci bag which contained methylamphetamines found inside the vehicle.

124 In relation to being arrested, you made the statements as outlined in the prosecution opening.

125 When asked about the stolen identification belonging to Mr Johnston, you told police, 'Yeah, I did notice that this morning – this morning. I don't even know how I came across it', and, 'Planning on when I come past the cop shop to hand it in or whatnot'.

126 **Nature and gravity of the offending**

127 I turn first to the offending on Indictment No. C2114419.1.

128 Aggravated carjacking is viewed by parliament as a very serious offence, reflected in the maximum penalty of 25 years imprisonment. Further, pursuant to s 10AD of the *Sentencing Act 1991* ('*Sentencing Act'*), unless a special reason exists, the Court must impose a term of imprisonment and fix a non-parole period of not less than three years.

129 While the victim was concerned about your behaviour and was looking for you following your initial contact with him, he did not confront you. Nonetheless you, Michael Robb, punched him to his face while he was sitting in his car. The victim told you he had a medical condition and began returning to his house when he was struck with the baseball bat. You then stole his car.

130 Mr Guarino, the victim of the aggravated carjacking and causing injury recklessly charges prepared a victim impact statement, which I have taken into account.

131 He states that he continues to 'remember the day you attacked [him] like it was yesterday' and the 'feelings of terror' you two instilled in him, even though more than two years have elapsed. He suffers ongoing health problems due to being a kidney transplant recipient and your attack has caused him further medical troubles, including ongoing aural distortion. There has been a financial aspect to the impact of your crimes as well, as Mr Guarino attests he has had to pay for specialist medical appointments, as well as extra security around the property, including sensor lights, to ease his fears and anxieties. His children now refuse to play outside, believing that when they see someone outside the house, it is the

two of you. It is clear that Mr Guarino and his family continue to be haunted by your attack.

132 In my view this was gratuitous conduct resulting in a reasonably serious example of the offence of aggravated carjacking.

133 The second incident in relation to the joint indictment occurred some two days later and again in my view, represents gratuitous violent offending. The two victims were simply walking along the road when you both approached them initially, striking one of the victims to the head with a metal object. That victim was then struck a second time to the head with the metal object. The second victim ran but was chased down and punched to the back of the head by you, Michael Robb, causing him to fall to the ground. Once on the ground you, Michael Robb, stomped on his head and punched him multiple times before taking his wallet. Following that part of the incident you, Michael Robb, returned to kicking and punching the victim further while you, Adam Tsaktserlis, struck him with a metal pole to the head and upper body a number of times.

134 The injuries to the two victims are outlined above demonstrating the multiple injuries they each suffered. Specifically, in relation to Mr Bell, amongst other injuries, he required a number of sutures and suffered a fractured vertebra. In my view in relation to Mr Bell, this is a serious example of intentionally causing injury.

135 Turning to the charge of armed robbery in relation to you Michael Robb. The victims in this instance were 15 year old friends and again, they were simply walking along the road when approached by the two of you in a vehicle. You Michael Robb exited the vehicle and produce what appeared to the victims to be a gun demanding their wallets. After one of the victims handed over his phone, you struck him to his head with the gun before running from the scene. While no victim impact statements were provided from these victims, this would have undoubtedly been a frighting experience for them.

136 Michael Robb, I turn to your offending on Indictment M10773308. While this offending is of a lower level than the subject of the first indictment, it is nonetheless further evidence of serious offending involving violence, dishonestly and drugs.

137 Adam Tsaktserlis, I turn now to your offending on Indictment M10772938. This indictment represents dishonesty, drug and firearms offending. While the dishonesty and drug offences are relatively low level, it is the firearm offending that is disturbing and serious conduct. Charge 3, prohibited person possess imitation firearm, is a rolled up charge reflecting your possession of 11 imitation firearms while Charge 3, possess traffickable quantity of firearms, reflects your possession of seven firearms, six of which were 3D printed handguns.

138 **Personal circumstances**

139 *Michael Robb*

140 Michael Robb, you were born in 1996 and are now 27 years old. Your parents separated shortly after your birth and you have never known your father. Your childhood was chaotic – your mother and her partners struggled with substance use and the police were frequently called to the home due to domestic violence. You left school in Year 7 or thereabouts, leaving home at around the same time. You worked in a butcher shop and then in a Baker's Delight, before obtaining work as a farm labourer in Monbulk. The property was run by your girlfriend's father, and ostensibly you are able to return there when you become eligible for release. During your remand period you have worked as a billet in the prison.

141 For the purpose of a sentence indication hearing, two historical reports were tendered. One is a 2019 CISP Remand Outreach Program report ('CISP report'), initially submitted to the Magistrates' Court in respect of previous offending. The other is a 2013 neuropsychological report authored by Dr Julia Shekleton. Read together, the reports provide a comprehensive account of your history of drug

use, which began when you were 13 or 14 years old. You have used many different substances over the years, including heroin, cocaine, amphetamines, inhalants, benzodiazepines and hallucinogens. However, the drug that has proved most problematic for you is methylamphetamines.

142 At the further plea hearing a new report was tendered dated 29 August 2023, prepared by forensic psychologist Dr Hannah Dawson. Dr Dawson provides a detailed history and an updated clinical opinion which I have taken into account. In short Dr Dawson states that her current assessment 'provides support' for the diagnosis of Stimulant Use Disorder, Complex PTSD and an 'unsubstantiated' Antisocial Personality Disorder. Dr Dawson also states that you presented with fluctuations in mood 'indicative' of Major Depressive Disorder and Generalised Anxiety Disorder.

143 You have an extensive prior criminal history littered with similar examples of offending. In 2019, you were sentenced in this jurisdiction for robbery and theft, to a combination sentence of 6 months imprisonment followed by a 2 year Community Correction Order. The CISP report notes that you undertook alcohol and drug treatment in the community pursuant to the Community Correction Order, but it is clear from your subsequent criminal history that your problematic use of drugs and alcohol has continued. Indeed, you were under the influence of drugs when you committed this current offending.

144 *Adam Tsaktserlis*

145 I turn now to you, Adam Tsaktserlis. You were born in 1993 and are now 30 years of age. By your own account, your childhood was unremarkable. You grew up in Warrandyte and generally performed well in school, although you left after finishing Year 11 as you were advised you were unlikely to pass Year 12. Your father worked in a senior role at the Box Hill Council until his career was cut short by health problems, which are ongoing to this day. Your mother works as a bookkeeper, in a role she has held for over 25 years. You have weekly phone

calls with her from custody, and continue to enjoy the support of both your parents. You will return to the family home upon your release.

146 Although you have never been diagnosed with any mental health conditions, I note you sustained significant head trauma when you were 16 years old when you were randomly and severely assaulted in Richmond on your way home from the football. You were struck in the face by the backside of an axe, which knocked out three front teeth and left you unconscious. You spent seven days in intensive care and suffering bleeding in the brain. Following this, you undertook some brief counselling to address symptoms of anxiety and hypervigilance.

147 Your employment history was relatively steady up until the onset of the COVID-19 pandemic. After leaving school, you enrolled in a four year apprenticeship and became a qualified panel beater. You were consistently employed as a panel beater from this time until early 2020, notwithstanding a period of unemployment from August 2017 to February 2018. In early 2020, due to the emerging COVID-19 pandemic and disagreements with management, you were forced to leave your senior role at a body shop in Mitcham. Prior to the offending, you were working 'off the books' for a mechanic in Box Hill South. You instruct that you are able to find work immediately upon release into the community.

148 Whilst on remand, you have worked in the food line and currently work as a billet. You have also completed various courses in OH&S, safe food handing, and literacy and numeracy. Significantly, you have also undertaken AOD counselling.

149 Your substance use issues started in your teen years. You commenced using cannabis when you were 16 and were introduced to methylamphetamine when you were around 18 years old. Your usage was confined to weekends, so you were able to remain employed and functional against this background of sporadic use. However, your use escalated dramatically over the course of the COVID-19 pandemic, such that you would smoke up to half a gram a day. As in the case of your co-offender, there is a clear and obvious link between your problematic

substance use and your current and past offending. However, you have been abstinent since being remanded in April 2021, as evidenced by the 12 negative urine screens tendered on the plea.

150 **Sentencing considerations**

151 I first take into account each of your pleas of guilty, which were entered following applications for a sentence indication before me. You each accepted the proposed sentence. While not at the earliest opportunity, your pleas have saved the court considerable time and expense and importantly, saved the victims from having to give evidence and relive the event. Your pleas carry additional weight which must be reflected in a further amelioration in sentence, as they were entered in circumstances where the pandemic has caused a substantial backlog of cases in the criminal justice system.[1]

152 I turn now to the issue of parity, which is enlivened with respect to the joint offending on Indictment C2114419.1, which relates to the 28 March 2021 incident (Charge 1 – Aggravated carjacking; Charge 2 – Causing injury recklessly) and the 30 March 2021 incident (Charges 3 and 4 – Causing injury intentionally).

153 Mr Portelli, who appeared on behalf of you, Adam Tsaktserlis, submitted that your role in both incidents was more limited and passive than that of your co-offender. The prosecution disagreed with this characterisation and submitted that your roles cannot be differentiated in such a way as to minimise your role in what was objectively serious offending. On 28 March 2021, you effectively provided security for Mr Robb while he assaulted the victim and stole his vehicle. On 30 March 2021, you were driving the car when Mr Robb, your passenger, reached out and struck the victim to the back of the head with a large metal object. Both of you then exited the vehicle and proceeded to jointly and viciously attack the two victims, armed with the large metal object. I consider your involvement in both incidents to be joint offending. Nonetheless, to some degree, I have taken

[1] *Worboyes v The Queen* [2021] VSCA 169 at [39].

into account your specific roll in the actual physical assaults compared with that of Mr Robb.

154 Adam Tsaktserlis, as to your prospects of rehabilitation, it is clear you have had a battle with drug addiction, motivating your prior offending. Significantly you also have relevant firearms offences. You have family support and you have remained drug free in custody. The test will be whether you can remain drug free upon your release. As such in my view you will need to proactively accept services offered to you on parole. At this stage in my view your prospects can only be assessed as fair.

155 Mr Backwell, who appeared on behalf of you, Michael Robb, submitted that you believe drugs and anger to be the drivers of this and your past offending. You have been offered the full range of sentencing dispositions in the children's and adult jurisdictions. Further, you do not appear to have many social or emotional supports in the community. You are now approaching an age where you must either make a genuine commitment to rehabilitation or risk institutionalisation. Nonetheless this will be your first opportunity of a parole period and if you take the opportunity to engage in the services offered to you, your prospects, which I currently assess as guarded, will improve.

156 As a result of the updated report of Dr Dawson, Mr Backwell submitted that *Verdins* principle 5 is enlivened in that any prison sentence will weigh more heavily on you that on a person in normal health. On this point the report of Dr Dawson is unclear. She sates that as a result of your developmental difficulties and 'entrenched personality and clinical disorders', prison would be more onerous for you. However as noted, Dr Dawson found that her diagnosis of Antisocial Personality Disorder is unsubstantiated and remains provisional. The same comment is made in relation to pre-existing PTSD and ADHD, although she is of the view that there is support for a diagnosis of Stimulant Use Disorder and Complex PTSD. While *Verdins* principles do not depend on diagnostic labels

in my view, I do take into account your long history of antisocial behaviour and chronic substance abuse and as such I accept that *Verdins* principle 5 is enlivened but only to a limited degree.

157 Deterrence, both general and specific are the primary sentencing considerations in the circumstances. Your offending involved attacks on random, innocent members of the community and must be denounced and deterred. Protection of the community is also a relevant consideration in this instance. As to you, Adam Tsaktserlis, and the firearm offending, your conduct must also be deterred generally and specifically. The imitation and real firearms in your possession had the potential to cause enormous harm in the community.

158 **Sentence**

159 Mr Robb, would you please stand.

160 Michael Robb on Indictment C2114419.1 you are sentenced as follows:

161 On Charge 1, aggravated carjacking, you are convicted and sentenced to 4 years and 6 months imprisonment. This will be the base charge. On Charge 2, recklessly cause injury, you are convicted and sentenced to 8 months imprisonment. On Charge 3, intentionally cause injury, you are convicted and sentenced to 2 years imprisonment. On Charge 4, intentionally cause injury, you are convicted and sentenced to 3 years imprisonment. On Charge 5 robbery, you are convicted and sentenced to 2 years imprisonment. On Charge 6, armed robbery, you are convicted and sentenced to 4 years imprisonment.

162 On Indictment M10773308 you are sentenced as follows:

163 On Charge 1 theft, Charge 3 possess drug of dependence and Charge 5, negligently deal with the proceeds of crime, you are convicted and sentenced to 1 month imprisonment on each charge. On Charge 2, common assault, you are

convicted and sentenced to 3 months imprisonment. On Charge 4, possess false document, you are convicted and sentenced to 2 months imprisonment.

164 In relation to Indictment C2114419.1, I direct that 12 months of the sentence on Charges 4 and 6, 4 months of the sentence on Charge 3, 2 months of the sentence on Charge 5, 1 month of the sentence on Charge 2 and 1 month of the sentence on Charge 2 of Indictment M10773308, be served cumulatively on each other and on the base charge, making for a total effective sentence of 7 years and 2 months. I direct that you serve 4 years and 9 months before becoming eligible for parole.

165 Mr Tsaktserlis, would you please stand

166 Adam Tsaktserlis on Indictment C2114419.1 you are sentenced as follows:

167 On Charge 1, aggravated carjacking, you are convicted and sentenced to 4 years imprisonment. This will be the base charge. On Charge 2 recklessly cause injury, you are convicted and sentenced to 4 months imprisonment. On Charge 3, intentionally cause injury, you are convicted and sentenced to 18 months imprisonment. On Charge 4, intentionally cause injury, you are convicted and sentenced to 3 years imprisonment. On Charge 7, assisting an offender, you are convicted and sentenced to 1 year imprisonment.

168 On Indictment M10772938 you are sentenced as follows:

169 On Charge 1 attempt to obtain financial advantage by deception and Charge 2 attempt to obtain property by deception, you are convicted and sentenced to 3 months imprisonment on each charge. On Charge 3, possess traffickable quantity of firearms and Charge 4, prohibited person possess imitation firearms, you are convicted and sentenced to 2 years imprisonment on each charge. On Charge 5 possess drug of dependence and Charge 6 handle stolen goods, you are convicted and sentenced to 1 month imprisonment on each charge.

170 On related summary charge 21, commit indictable offences while on bail, you are convicted and sentenced to 1 month imprisonment.

171 In relation to Indictment C2114419.1, I direct that 12 months of the sentence on Charge 4, 3 months of the sentence on Charges 3 and 7, and 6 months of the sentence on Charges 3 and 4 of Indictment M10772938 be served cumulatively on each other and on the base charge, making for a total effective sentence of 6 years and 6 months imprisonment. I direct that you serve 4 years before becoming eligible for parole.

172 In relation to each of you, on Charge 1, aggravated carjacking, pursuant to s 89(2)(b) of the *Sentencing Act,* any licence you hold is cancelled and you are disqualified from obtaining a licence for a period of 2 years from today.

173 Pursuant to s 18 of the *Sentencing Act*, in relation to you, Michael Robb, I declare that 879 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today. In relation to you Adam Tsaktserlis, I declare that 879 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.

174 Pursuant to s 6AAA of the *Sentencing Act*, I indicate that had you not pleaded guilty, I would have sentenced you Michael Robb, to a period of 9 years imprisonment with a non parole period of 6 years and 6 months and you, Adam Tsaktserlis, to a period of 8 years imprisonment with a non parole period of 5 years years and 3 months.